

101011200/9



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Coastal Science and Engineering, Inc.

File: B-236041

Date: November 7, 1989

DIGEST

Protest is sustained where agency evaluation gave greater weight to technical factors than was reasonably consistent with the solicitation evaluation criteria by using a scoring formula which accorded only 10 percent to price, and 90 percent to technical, which resulted in award to a firm whose price was 67 percent higher than the protester's but whose technical score was only 9 percent higher than the protester's.

DECISION

Coastal Science & Engineering, Inc. protests the award of a contract to Woodward-Clyde Corporation under request for proposals (RFP) No. CX5000-9-0023, issued by the National Park Service, Department of the Interior, for a study of changes in the Cumberland Island marsh, mudflat and tidal creek morphology and sediment accretion rates. Coastal alleges that 1) the award to a substantially higher-price offeror was unjustified, 2) adequate discussions were not conducted, 3) its offer was misevaluated and not credited for Coastal's small business status as required under the RFP, and 4) that the statement of work under the RFP was insufficiently defined.

We sustain the protest on the basis that the award selection was inconsistent with the evaluation criteria.

The RFP provides for acceptance of the offer which is most advantageous to the government, price and other factors considered, and states that "technical quality is more important than cost or price." The RFP also provides for consideration of other listed factors secondary to technical quality and price. The other listed factors include a provision for giving credit for an offeror's small business status. The RFP is for a one year contract for phase I of

047034/139962

the project and provides for possible negotiation with the awardee of payment for subsequent phases of the project.

Three initial proposals were received by the closing date, including Coastal's and Woodward's. Since Coastal submitted its proposal without having protested that the statement of work was insufficiently defined, this allegation is untimely under our Bid Protest Regulations, which require that a protest alleging an apparent solicitation impropriety must be filed prior to the receipt of initial proposals.
4 C.F.R. § 21.2(a)(1) (1989).

A technical evaluation panel (TEP) evaluated the initial proposals and determined that all three were technically acceptable and should be included in the competitive range. Coastal had proposed a cost-plus-fixed-fee contract, with an estimated total cost of \$ 53,668. Woodward had proposed a firm fixed price of \$81,000.

In its best and final offer, Coastal proposed a firm fixed price of \$47,093. Woodward's proposed price was \$78,773. The TEP reevaluated the technical proposals and arrived at a final technical score of 141.8 (out of a possible 180) for Woodward's proposal and 130.1 for Coastal's proposal. The contracting officer states that a technical score value of 90 was considered to constitute an "adequate" proposal while a score value of 144 was considered "good." Hence both proposals received technical scores within the point range designated by the agency as adequate. The contracting officer applied a formula to these results which attributed a weight of 90 percent to the technical scores and 10 percent to the prices. Coastal's low price received a price score of 20 which, under this formula, resulted in a total combined score of 150.1; Woodward received a price score of 11.4, which resulted in a total score of 153.2.1/ The contracting officer concluded that Woodward's proposal was more advantageous to the government. He indicated that the technical advantages are "clearly evident in the evaluation, primarily a larger more expert team of researchers with more varied backgrounds." He concluded that these advantages outweigh the higher cost "as evidenced

1/ We note that while the RFP evaluation formula called for some credit for small business status, this factor was not considered at all by Interior, which treated it as only a tie-breaking consideration. Had small business status been afforded as little as 2 percent weight under Interior's formula, Coastal, which is a small business, would have received a point total higher than Woodward, which apparently is not a small business.

by a markedly higher overall ranking; the greater number of higher technical rankings for the individual criteria most important to the success of the project . . . and the ratio of man hours by more qualified personnel as compared to the other proposals."

In a negotiated procurement, the contracting agency has broad discretion in determining the manner and extent to which it will make use of the technical and cost evaluation results. TRW, Inc., B-234588, June 21, 1989, 68 Comp. Gen. ___, 89-1 CPD ¶ 584. Cost/technical tradeoffs may be made and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation criteria. Id. However, here we find the tradeoff unjustified and inconsistent with the stated criteria. In particular, we find that while the solicitation indicated that technical was more important than price, it did not offer any suggestion of the magnitude of the disproportion between the weights actually assigned--90 percent versus 10 percent. In our view, merely indicating that one factor is more important than another may not reasonably be construed to accord the factor nine times the importance of the other factor. See BDM Servs. Co., B-180245, May 9, 1974, 74-1 CPD ¶ 237. Furthermore, because here this differential so minimizes the potential impact of price that it makes a nominal technical advantage essentially determinative, irrespective of an overwhelming price premium, we also question whether such a formula is consistent with the requirement under the Competition in Contracting Act (CICA) that price be one of the significant factors in the evaluation of competitive proposals. 41 U.S.C. §§ 253a(b)(1); 253b(d)(4) (Supp. IV 1986). We note that if the formula utilized by the agency had afforded price even a 15 percent weighing factor, Coastal would have received a higher total score than Woodward.

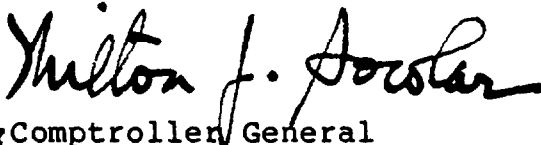
Moreover, irrespective of the total point scores, the contracting officer's suggestion that the Woodward proposal was sufficiently technically superior to warrant payment of the cost premium involved is not substantiated by the record. Both best and final proposals received technical scores in the point range which was denominated "adequate," and the contracting officer states of Coastal's proposal that the TEP found that "the problem is well understood and the methods well defined; the firm is well organized and has a feasible work plan with appropriate emphasis on marshes and sediments, [and] the team is highly qualified with a demonstrated excellence." The TEP indicated as technical weaknesses of Coastal's proposal that "presentation is weak" and that there was "uncertainty regarding results of the investigation that the offeror appears to believe can be

resolved on a statistical level." However, these concerns are inconsistent with the above-cited favorable assessment of Coastal's understanding, methods and work plan. In addition, while the contracting officer expressed concern about Coastal's low price, as the technical evaluation makes clear, Coastal's low price does not reflect any lack of understanding of the scope of the study, or of the work required. Further, Coastal's price was afforded the maximum possible score (20), by Interior, which indicates that the agency did not question Coastal's price realism.

In effect, the contracting officer used Coastal's low price as an indication that the proposal was lacking in technical merit. However, a low fixed price offer such as Coastal's cannot be downgraded by virtue of its low price, and the fact that an offeror's price is considered unusually low does not provide a valid basis for rejecting a technically acceptable fixed price proposal, absent a finding of nonresponsibility, which is not present here. Ball Technical Products Group, B-224394, Oct. 17, 1986, 86-2 CPD ¶ 465.

Interior has advised that the awarded first year initial phase of the project has been substantially performed by Woodward. Suspension of contract performance was not required under CICA because the protest was filed in our Office more than 10 days after the award was made. Accordingly, termination of the contract is not a feasible remedy. However, we recommend that no awards for any additional phases of the study be negotiated with Woodward pursuant to this contract. Since the agency's improper actions deprived the protester of a fair opportunity to compete for the award, Coastal is entitled to recover its proposal preparation costs. 4 C.F.R. § 21.6(d)(2); Rotair Indus., Inc., B-232702, Dec. 29, 1988, 88-2 CPD ¶ 636. Coastal is also entitled to the costs of filing and pursuing its protest. 4 C.F.R. § 21.6(d)(1).

The protest is sustained.



Acting Comptroller General
of the United States